

IMPLEMENTING IMPROVED TENURE GOVERNANCE IN FISHERIES

A TECHNICAL GUIDE TO SUPPORT THE IMPLEMENTATION OF THE
VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF
TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF
NATIONAL FOOD SECURITY



PRELIMINARY VERSION

SEPTEMBER 2013



The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views or policies of FAO.

ISBN 978-92-5-107900-3 (print)
E-ISBN 978-92-5-107901-0 (PDF)

© FAO, 2013

FAO encourages the use, reproduction and dissemination of material in this information product. Except where otherwise indicated, material may be copied, downloaded and printed for private study, research and teaching purposes, or for use in non-commercial products or services, provided that appropriate acknowledgement of FAO as the source and copyright holder is given and that FAO's endorsement of users' views, products or services is not implied in any way.

All requests for translation and adaptation rights, and for resale and other commercial use rights should be made via www.fao.org/contact-us/licencerequest or addressed to copyright@fao.org.

FAO information products are available on the FAO website (www.fao.org/publications) and can be purchased through publications-sales@fao.org.

Cover photograph:

Courtesy of Nicole Franz.

PREPARATION OF THIS DOCUMENT

As part of the consultation process for the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT), several case studies were carried out on governance of tenure in fisheries. The case studies covered a variety of countries and fisheries environments and explored the meaning of governance of tenure in fisheries. Several of these case studies are being published in a thematic issue on fisheries of the FAO Land Tenure Journal in 2013. FAO organized a workshop in July 2011 to discuss the governance of tenure for responsible capture fisheries, drawing on the results of the case studies and the “Voices of fishers” initiative – a project carried out in collaboration with the International Collective in Support of Fishworkers and providing testimonies on tenure governance issues from fishers. This document *Implementing improved governance of tenure in fisheries: a technical guide to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (the ‘Guide’) is based on these outcomes. It also takes into account the results and information generated by other relevant processes, in particular the consultations carried out in the context of the development of the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication.

This document was prepared by the FAO Fisheries and Aquaculture Department. The text was initially drafted by Lena Westlund (FAO consultant) with important inputs from FAO staff including Nicole Franz, Carlos Fuentesvilla, Rebecca Metzner, Francesca Romano, Margret Vidar and Rolf Willmann. The contributions by several external peer reviewers including Svein Jentoft, John Kurien, Patrick McConney and Jackie Sunde are gratefully acknowledged. The final version of this document will be become available after a period of additional discussions and reviews in 2014.

The publication of this document was made possible thanks to funding from the Federal Ministry of Food, Agriculture and Consumer Protection of Germany and from Sweden through the FAO Multi-Partner Programme Support Mechanism (FMM).

For further information or to provide comments, please contact:

Rebecca Metzner
Fisheries and Aquaculture
Department
FAO
Rebecca.Metzner@fao.org

Nicole Franz
Fisheries and Aquaculture
Department
FAO
Nicole.Franz@fao.org

Francesca Romano
Tenure, Climate and Energy
Division
FAO
Francesca.Romano@fao.org

FAO. 2013.

Implementing improved tenure governance in fisheries – A technical guide to support the implementation of the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security. Preliminary version, September 2013. Rome. 71 pp.

CONTENTS

PREFACE	iii
PREPARATION OF THIS DOCUMENT.....	iv
CONTENTS	v
LIST OF TABLES	vi
LIST OF FIGURES	vi
LIST OF BOXES	vii
ABBREVIATIONS AND ACRONYMS.....	viii
INTRODUCTION	1
Background.....	1
Objective and scope of this guide.....	2
PART 1: CHARACTERISTICS OF RESPONSIBLE TENURE GOVERNANCE IN FISHERIES	3
What do tenure rights and governance of tenure mean in the context of fisheries?	3
Why is responsible governance of tenure needed in fisheries?	4
Livelihood security and social well-being.....	5
Biologically sustainable and economically efficient resource utilization.....	6
Who has rights to fishery resources, and what are the related responsibilities?	7
Can fisheries resources be sustainably managed as common property?	10
Why should a human rights approach be used in small-scale fisheries governance and development?	11
What are the different types of formal tenure rights in fisheries?	13
What are customary and informal tenure rights?	16
What happens with shared fishery resources and those in international waters?	18
Is there an international legal and policy framework relevant to governance of tenure in fisheries?	19
How can tenure rights be valued?	20
What are the emerging issues that need to be considered in the future?	22

PART 2: IMPLEMENTING RESPONSIBLE TENURE IN FISHERIES..... 24

Implementation context 24

General principles 26

Setting objectives 27

Improving knowledge 29

 Stakeholders and existing tenure rights 29

 Assessing the value of tenure rights 32

 Investments 33

Allocating rights 35

 Allocation process 35

 Reallocation of tenure rights and competition among users 39

Administering tenure rights 42

 Administrative and related services provided by governments 42

 Capacity and institutional structures 43

 Rights registry, records and information 45

 Conflict resolution mechanisms..... 47

Special considerations: climate change and natural disasters 49

Monitoring and evaluation (M&E) and compliance..... 51

REFERENCES 53

APPENDIX 1: GLOSSARY..... 59

APPENDIX 2: APPROACHES AND TOOLS..... 61

LIST OF TABLES

Table 1: Typology of rights-based management systems – examples found in OECD countries 15

LIST OF FIGURES

Figure 1: Context and process of implementing responsible tenure 25

LIST OF BOXES

Box 1: What is governance of tenure and why is it important?	1
Box 2: Small-scale fisheries.....	2
Box 3: What is governance?	4
Box 4: What is fisheries management?	8
Box 5: Men and women in the fisheries sector	12
Box 6: What is integrated spatial planning?	14
Box 7: Co-management structures in Burkina Faso.....	14
Box 8: Migrating fishers and fishworkers and informal rights.....	16
Box 9: Accommodation of customary rights in South Africa	17
Box 10: Selected international instruments	19
Box 11: Implications of buffer zone policy after the 2004 tsunami.....	23
Box 12: Local fisheries governance and management arrangements in the Philippines	27
Box 13: Integrating traditional rights.....	31
Box 14: The case of marine protected areas (MPAs).....	32
Box 15: The “parcela” systems of Chilean algal harvesters	36
Box 16: ICCAT criteria for the allocation of fishing possibilities	37
Box 17: Transferability of Galapagos Islands commercial fishing rights.....	38
Box 18: Fishing communities in the Patos Lagoon system in Brazil	50

INTRODUCTION

BACKGROUND

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT) were officially endorsed by the Committee on World Food Security (CFS) on 11 May 2012. This endorsement represented the successful conclusion of an extensive consultation and negotiation process, and there is now an internationally agreed framework, including principles and accepted standards, for responsible governance of tenure of land, fisheries and forests (see Box 1). The VGGT will be used by actors and stakeholders – government authorities, the private sector, civil society and citizens – when developing strategies, policies, legislation and programmes, and they constitute an important tool for judging whether proposed actions constitute acceptable practices. The implementation of the VGGT will contribute to poverty alleviation, food and nutrition security and equitable economic growth and, hence, promote an economically, socially and environmentally sustainable future for the planet and its people in line with the outcomes of the United Nations Conference on Sustainable Development in Rio de Janeiro in 2012 (Rio+20).

Box 1: What is governance of tenure and why is it important?

Tenure is how people gain access to land, fisheries, forests and other natural resources. Governance of tenure affects whether, and how, people are able to acquire rights and to protect already existing rights to use and to control these resources. Many tenure problems arise because of weak governance, and the quality of governance affects the attempts to fix these problems. Inadequate and insecure tenure rights to natural resources often result in extreme poverty and hunger. The eradication of hunger and poverty – as well as the sustainable use of the environment and the continued provision of ecosystem services – depends in large measure on how people, communities and others gain access to land and other natural resources. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are: the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in equitable economic growth.

Source: FAO (2012a).

In the fisheries sector, ineffective governance of tenure constitutes a major obstacle to a sustainable and efficient use of natural resources and, hence, livelihoods and food and nutrition security are jeopardized. Many small-scale fishing communities suffer from insecure access to the resources they depend on. While access to fishery resources is a key consideration, it is important to understand that fishing communities also depend on access to other resources and services: land, housing, markets, financial resources, information, legal systems and social services (e.g. education, health care, sanitation). In fact, land and fisheries tenure rights need to be combined. Small-scale fishing communities need secure use rights to fishery resources and to land in the coastal, lakeshore or waterfront area – for ensuring and facilitating access to the fishery, for accessory activities (including processing and marketing), and for housing and other livelihood support.

Many of the world's fishery resources – both in marine and inland waters – are in a precarious state. Overfishing and economic inefficiency because of overcapacity characterize numerous fisheries around the world. This means that fisheries do not contribute to economically, socially and environmentally sustainable development in the way the sector could do. This situation is further aggravated by uncertainties related to climate change impacts and other developments due to global change. Improving governance of tenure, taking these aspects and underlying causes into consideration, is hence a matter of urgency.

OBJECTIVE AND SCOPE OF THIS GUIDE

This Guide has been developed to assist in the implementation of the VGGT with regard to fisheries in marine and inland waters. It explains the characteristics of the fisheries sector and provides technical guidance. Its purpose is to contribute to the achievement of the VGGT objectives in respect of the improvement of governance of tenure in fisheries. Special attention is given to small-scale fisheries, considering the sector's particular importance to food security and nutrition, poverty eradication, equitable development and sustainable resource utilization (see Box 2). Many small-scale fishing communities are vulnerable and marginalized and, hence, represent the people who are at the core of the VGGT remit.

The Guide is directed to those in governments and other organizations who are involved in issues related to governance of tenure in fisheries and in areas where fishing communities are settled or where they carry out activities supporting their livelihoods. The target audience thus includes in particular relevant staff of fisheries and other government agencies and regional organizations but also the private sector and civil society organizations (CSOs). Part 1 of the Guide provides explanations with regard to important concepts for understanding tenure in fisheries. This part is of particular relevance to those who are not familiar with the fisheries sector. Part 2 discusses approaches for how to implement responsible tenure in fisheries and is directed to those who are tasked with implementing the VGGT in the fisheries sector and for the benefit of small-scale fishing communities.

Governance in fisheries with respect to rights to fishery resources (access to fishing) is a subject on which there is already considerable literature and guidance available. While attempting to give an accurate overview of the subject matter, this Guide focuses on issues of concern with regard to tenure in the context of livelihoods of vulnerable and marginalized groups. References to more in-depth information and specialized literature that readers are invited to consult along with this document are provided, as applicable.

It should be noted that the term fishery resources in this document includes other aquatic animals or plants that are fished or harvested. However, while it is recognized that there are often important linkages between aquaculture and fisheries, the Guide focuses on the capture fisheries sector.

Box 2: Small-scale fisheries

Small-scale fisheries generate income, provide food for local, national and international markets and make important contributions to nutrition. They employ more than 90 percent of the world's capture fishers and fishworkers, about half of who are women. In addition to full- and part-time fishers and fishworkers, seasonal or occasional fishing and related activities often provide vital supplements to other livelihood activities, in times of difficulties or as a recurrent sideline activity. Small-scale fisheries are estimated to contribute almost half of global fish catches and, when considering catches destined for direct human consumption, the share contributed by the sector increases to two-thirds. Inland fisheries are particularly important in this respect, with small-scale fisheries food fish production dominating the subsector.

Sources: FAO (2012b); World Bank, FAO and WorldFish Center (2012).

PART 1: CHARACTERISTICS OF RESPONSIBLE TENURE GOVERNANCE IN FISHERIES

Part 1 of this document intends to enhance the understanding of how responsible tenure applies to fisheries focusing on small-scale fishing communities. It intends to provide information for those who are not familiar with the fisheries sector and on how to look at tenure in this context. Questions with regard to what tenure rights are and why they are important to small-scale fishing communities, as well as the meaning of rights in the fisheries sector, are discussed. Tenure rights come in many different forms, and an overview of the different rights and systems available is provided. A description of the relevant international policy and legal frameworks is given, and the need to understand customary and informal tenure systems is emphasized. Moreover, the complex concept of tenure right values is addressed, and issues related to global change, including climate change, are raised.

WHAT DO TENURE RIGHTS AND GOVERNANCE OF TENURE MEAN IN THE CONTEXT OF FISHERIES?

With regard to the definition of tenure, the VGGT explain that:

Tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices.

(Preface)

Tenure in fisheries – as in other natural resource sectors – refers to the manner in which the relationships between people are defined and negotiated in the context of the utilization of fishery and related resources, i.e. tenure defines who is a user and, therefore, who has a legitimate right to a resource and who does not. Governance of tenure then deals with how tenure rights are allocated, changed (legalized, transferred, etc.) and administered (see Box 3).

While formal tenure rights are generally still a developing concept in fisheries, there is a long history of customary and traditional tenure systems in fishing communities (Cordell, 1989). These have tended to be in the form of rights (to fish) in certain areas – i.e. spatial access or use rights (see section *What are the different types of formal tenure rights in fisheries?* below) – and have often been found in conjunction with land tenure. In many places, for example in small island States in Oceania, natural resources and the space they occupy have traditionally not been divided into two different components of land and water (Aswani, 2005). Instead, nature – including humans and society – has been seen holistically, with communities having a multifunctional resource space as the basis for their livelihoods (Ruddle, 1988). Hence, fisheries tenure cannot be viewed in isolation but needs to be considered in connection with a broader land and livelihoods context (FAO, 2011a).

Box 3: What is governance?

Governance can be construed as the formal and informal arrangements, institutions, and mores that determine how resources or an environment are utilized; how problems and opportunities are evaluated and analysed, what behaviour is deemed acceptable or forbidden, and what rules and sanctions are applied to affect the pattern of resource and environmental use.

Source: Juda (1999).

However, governance can also take a more holistic meaning:

Governance is the whole of public as well as private interactions taken to solve societal problems and create societal opportunities. It includes the formulation and application of principles guiding those interactions and care for institutions that enable them.

Source: Kooiman *et al.* (2005).

However, the development of formal tenure arrangements in fisheries has tended to focus on access to fisheries and use of fishery resources. In this context, the terminology of “rights” (as in rights-based management, discussed below) is perhaps more commonly used than “tenure”.² Still, tenure is a useful term because it indicates the broader system of rights – formal and informal – and includes social and societal notions of rights that individuals, groups of people or communities may have to a fishery resource. The term tenure rights covers the concepts of use and management rights but it is different from ownership and it is broader than fisheries management (see Box 4). Accordingly, tenure also includes traditional and customary rights that are not formally legalized.

WHY IS RESPONSIBLE GOVERNANCE OF TENURE NEEDED IN FISHERIES?**The VGGT emphasize the importance of governance of tenure and that:**

States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.

(§4.1 in *Rights and responsibilities related to tenure*)

Responsible governance of tenure ensures that tenure rights are recognized, defined, allocated and administered in a fair and equitable way, respecting human rights and reflecting societal objectives and the need to support the small-scale fisheries sector’s potential to contribute to food security and nutrition, poverty eradication, equitable development and sustainable resource utilization. Recognizing existing rights or allocating rights to, as well as responsibilities for, fishery and other natural resources to legitimate rights holders fulfils two key functions. First, users need secure access – defined in relation to other potential

² The term “property” is also used, as in “common property” and “private property” (see the sections *Can fisheries resources be sustainably managed as common property?* and *What are the different types of formal tenure rights in fisheries?* below).

users³ – to the resources they depend on for their livelihoods. Second, recognizing and allocating rights to fishery resources is a tool for fisheries management for promoting socially, economically and environmentally sustainable resource utilization.

LIVELIHOOD SECURITY AND SOCIAL WELL-BEING

Secure access to resources is a prerequisite for livelihood security and development. Not being able to count on certain basic resources creates vulnerability. Moreover, people are more likely to invest in their own future when they are confident that they will continue to be able to draw on the resources they need for their livelihoods. Fishers and fishworkers first and foremost need access to fishery resources to pursue their livelihood strategies but, as mentioned above, fishing communities also need other resources such as land – for the physical access to the water, storage of boats and gear, housing, etc. Fish processors and traders also need land together with access to water to set up their businesses. Moreover, in many small-scale fishing communities, livelihoods are diverse and households may be involved in other economic activities (e.g. farming or tourism) in parallel with fisheries activities requiring access to the relevant resources for these activities. In accordance with international human rights legislation, all persons have the right to “an adequate standard of living, including adequate food”⁴ and the right to “just and favourable conditions of work, which ensure ... a decent living for themselves and their families”⁵ and there is hence a strong link between rights to resources and human rights (see also below). Moreover, small-scale fishing communities, indigenous and others, often see fishing (and related activities) as more than a source of income. It is a way of life, and securing rights to their traditional way of living is a question of social justice (Jentoft, 2011).

With regard to secure access to land, in many countries, land in coastal areas cannot be privately owned. In some Caribbean and Indian Ocean islands, the land adjacent to the coastline is owned exclusively by the government and can only be leased, not sold, to private individuals. On the other hand, in many islands in the Pacific and the Indian Ocean, e.g. Maldives, there is a pattern of customary ownership, with communities, villages and clans owning coastal lands. Still, beaches in small island States in the Caribbean, Indian Ocean and Pacific regions tend to be considered public property for the use and enjoyment of all. Where coastal developments, such as tourism, interfere with this concept, conflicts may arise (Cambers, Muehlig-Hofmann and Troost, 2003). In this context, fishing communities are in a particular situation with regard to tenure and access to the shore area. If other sectors and economic activities, which may have strong political support, make claims to the area, they may be threatened by eviction if they do not have formal tenure of the land they occupy as well as to their fishing grounds. Hence, fishing communities need a bundle of rights covering both land and fisheries.

³ Secure tenure for some inevitably means exclusion of others. The importance of clear objectives, commensurate with human rights and overarching societal goals, and policy coherence is further discussed in the section *Setting objectives* in Part 2.

⁴ Article 11.1, International Covenant on Economic, Social and Cultural Rights.

⁵ Article 7 (ii) International Covenant on Economic, Social and Cultural Rights.

Overcapitalization and overexploitation is the sad reality of many fisheries in the world where conventional fisheries management has been unsuccessful or inadequate (see also the following section *Who has rights to fishery resources, and what are the related responsibilities?*). This has led to a dissipation of the economic benefits, referred to as rent, that can be created by the fishery. This rent—or rather loss of rent—was estimated at the global level by the joint World Bank/FAO report *The Sunken Billions* (World Bank, 2009). The study argues that, because of the inefficiency of fisheries, the world's capture fishery resources are costing the world economy an estimated USD50 billion per year in forgone resource rent. The cause of this poor economic performance of fisheries is that there are too many boats, gear and fishers (fishing capacity) compared with the amount of fish that can be caught sustainably.⁶

By giving users a stake in the future of the resource, a more responsible behaviour is expected and the incentives behind the “race for the fish” are dismantled. For this approach to work, the right given to a user or a group of users has to be secure – if the risk is high that the right will be taken away, the incentive to manage the fishery sustainably is diminished. The VGGT state that (§4.3) “... no tenure right, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the measures taken by States necessary for public purposes”. While this is a necessary premise of tenure of natural resources in general, it should be noted that long-term secure tenure is an important element of successful rights-based fisheries management.⁷ Still, it should be pointed out that a rights-based fisheries management system does not automatically remedy overfishing and induce good management. The appropriate type of rights regime needs to be in place and a variety of other conditions apply, e.g. there is a need for enforcement mechanisms and (scientific) information (WHAT, 2000).

The two aspects – livelihood security and sustainable and efficient resource utilization – are of course linked. Economically healthy fisheries are a prerequisite for achieving goals and benefits including sustainable livelihoods, food security and productive fish stocks (World Bank, 2009). The small-scale fisheries sector can play an important role in development and economic growth if provided with the right incentives and an enabling environment. Vesting use and management rights in small-scale fishing communities is likely to bring economic, social and environmental gains (UNEP *et al.*, 2012).

⁶ This theory and the “race for the fish” is explained and discussed in the literature (see, for example, WHAT, 2000).

⁷ See p. 16 and also the discussion in the chapter *Allocating rights* in Part 2.

WHO HAS RIGHTS TO FISHERY RESOURCES, AND WHAT ARE THE RELATED RESPONSIBILITIES?

The VGGT point out that

States have the power to allocate tenure rights in various forms, from limited use to full ownership. Policies should recognize the range of tenure rights and right holders.

(§ 8.8 in *Public land, fisheries and forests*)

States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

(§ 9.4 in *Indigenous peoples and other communities with customary tenure systems*)

Because of the characteristics of fishery resources – living in the water where they are difficult to see and rarely keeping within set boundaries – it is often more difficult to determine who owns them or has rights to them than it is for terrestrial resources. The “ownership” of fishery resources hence tends to be different from ownership of land, especially when defined as private or individual ownership. In fact, while fish in a lake on someone’s land could be seen as privately owned, in the marine sector “individual ownership in the fishery is rare” (p. 4, Scott, 2000). In most European countries, ownership of fish before it is caught is not conceivable – historically, wild fish has been considered as *res nullius* or unowned property (MRAG *et al.*, 2009). Still, in many places in the world, fishery resources are considered to be collectively owned by the communities that use them, and the concept of common property is important to many indigenous and small-scale fishing communities (see further below and the discussion in the section below *Can fisheries resources be sustainably managed as common property?*).

In the marine exclusive economic zones (EEZs) of countries, States have jurisdiction over living resources, and governments are thus responsible for managing these national assets. A variety of measures to control fishing (e.g. licensing, catch quotas, gear regulations) can be used, and governments can also delegate rights and responsibilities to individuals or communities. Fishery resources have the character of common pool resources, i.e. “resources in which (i) exclusion of beneficiaries through physical and institutional means is especially costly, and (ii) exploitation by one user reduces resource availability for others” (p. 278, Ostrom *et al.*, 1999). The need for fisheries management is based on this concept of fish stocks as common pool resources and that “individual fishers are unable to control the activities of other fishers in exploiting this common pool. Individuals’ attempts to moderate their own use of the resource will only result in benefits flowing to other users and, as a result, there is every reason to overuse, rather than conserve, the resource” (FAO, 2005–2013a). Fisheries that do not have regulations with regard to access are commonly referred to as “open access” fisheries, i.e. allowing anyone who wishes to fish to do so, and are hence likely to be subject to economic inefficiency due to overcapitalization as well as overexploitation (see also Box 4).

Box 4: What is fisheries management?

Fisheries management aims to achieve sustainable utilization of fishery resources, optimizing the benefits for society at the same time as safeguarding biodiversity. The term “conventional fisheries management” tends to be used for fisheries management carried out by a State through centralized command-and-control measures. This is the system that often replaced local customary and traditional systems as nation States with centralized administrations developed and exclusive economic zones (EEZs) were extended in the 1970s. As these systems have not always been effective, participatory management involving various degrees of decentralization and devolution of state functions and the introduction of right-based management systems have started to be advocated.

The scope of fisheries management has also widened in recent years to take broader ecosystem considerations more explicitly into account. The ecosystem approach to fisheries (EAF) “strives to balance diverse societal objectives, by taking account of the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries” (p. 14, FAO, 2003).¹ Its principles are not new but firmly anchored in a number of policy instruments and international agreements on sustainable development. Many governments and organizations are moving towards implementing ecosystem-based approaches to fisheries and natural resource management.

¹ See also FAO. 2009. *Fisheries management. 2. The ecosystem approach to fisheries. 2.2 The human dimensions of the ecosystem approach to fisheries*. FAO Technical Guidelines for Responsible Fisheries No. 4, Suppl. 2, Add. 2. Rome. 88 pp.

Sources: FAO (1997, 2003, 2005–2013a).

Traditionally, de facto use rights and management responsibilities for coastal and inland water fishery resources tended to be assumed by local fishing communities. As explained above, these rights and management systems were often spatially based. However, because of centralized fisheries management systems, technology development and demographic changes, customary practices for allocation and sharing of resource benefits in small-scale fisheries have often been eroded. Sometimes, traditional or customary claims to resources still exist but they are not always legally recognized, and management responsibilities may be ambiguous and/or ineffective. Legal pluralism is a term used to describe situations where there are several different legal ideas, principles and systems applied at the same time, and this is found in the fisheries sector (Jentoft *et al*, 2009).

In 1968, Hardin (1968) introduced the concept of the “tragedy of the commons”, arguing that unless a common pool resource were privatized and some sort of property rights attached to it, users of a commons would be caught in a process of overuse that would lead to the destruction of the resource. The recent move towards rights-based fisheries management is based on the notion that fisheries will generate more benefits if users have stronger rights to them more in line with property rights to, for example, land. Rights-based fisheries management is hence a concept that focuses on the privileges and rights – and responsibilities – in the form of common or private property rights of individuals (fishers), fishing vessels, communities or companies relating to fishing. These rights are often referred to as use rights and exist in many different forms, consisting of bundles of entitlements that confer both privileges and responsibilities (see also the section *What are the different types of formal tenure rights in fisheries?*).

Generally, a set of four attributes can be used to describe the characteristics of the different types of tenure rights in fisheries. These characteristics apply to all types of tenure rights, including both common and private property rights. The greater is the extent of these attributes, the stronger is the right (Scott, 2000):

- **Security** refers to the ability of the holder of the right to hold onto this right and not to have it challenged or revoked by other individuals, institutions or the government.

- **Durability** refers to the time span of the entitlement and can range from virtually nothing or one season or year to perpetuity.
- **Transferability** refers to the ability of the right holder to reassign (transfer or sell) his/her entitlement to others.
- **Exclusivity** refers to the extent to which the rights holder is allowed to use and manage his/her entitlement – such as a share of a fish stock – without interference from fisheries management regulations (with regard to methods of harvesting, seasons, etc.).

When designing and implementing a tenure system in fisheries, there are several decisions to be made with regard to these attributes. This is further discussed in Part 2 (see the chapter *Allocating rights*). Different types of rights are discussed below and examples given (see Table 1).

CAN FISHERIES RESOURCES BE SUSTAINABLY MANAGED AS COMMON PROPERTY?

The VGGT recognize the importance of resources that are collectively used and that:

Noting that there are publicly owned land, fisheries and forests that are collectively used and managed (in some national contexts referred to as commons), States should, where applicable, recognize and protect such publicly owned land, fisheries and forests and their related systems of collective use and management, including in processes of allocation by the State.

(§ 8.3 in *Public land, fisheries and forests*)

It is important to understand that a rights-based fisheries management regime does not necessarily imply privatization of resources through individual tenure rights but that it also includes options for common property and community-based arrangements.⁸ There is evidence that common pool resources can be utilized sustainably, e.g. by self-management by local communities. Certain conditions should be fulfilled, e.g. users need to perceive that common benefits are higher than costs and they should have some autonomy to make their own use and harvesting rules. The ability of users to self-organize is dependent on the social setting and users need to “share an image of how the resource system operates and how their actions affect each other and the resource” (p. 281, Ostrom *et al.*, 1999). In fact, most coastal resources are likely to have some forms of (collective) management systems attached to them, either customary arrangements that are still being applied to some extent by local fishing communities or systems that have been replaced by central management.

While an “open access” fishery implies risks for resource exploitation and economic inefficiency, the role of access to fishing for poverty prevention needs to be considered when looking to introduce or improve fisheries tenure rights regimes (Jentoft and Eide, 2011). Relatively “easy and free access to fishing grounds allows poor people to rely more heavily on local riparian resources to obtain the goods and services they need to sustain their livelihoods or to gain access to paid employment. Inland fisheries are particularly important in this context. This safety-net dimension of fisheries is of greater importance and relevance to poor and marginalized households – generally those with limited access to land and other resources.” (p. 409, Kurien and Willmann, 2009). It gives an opportunity to supplement other activities in situations of disruptions (unemployment, natural disasters, etc.). Small-scale fisheries are also important for poverty alleviation because of their capacity to absorb surplus labour (Béné, 2011). If and when considering converting common pool fishery resources into other forms of tenure, these types of functions need to be taken into account.

In the *Bangkok Statement*,⁹ prepared by small-scale fisheries civil society organizations (CSOs) for the Global Conference on Small-Scale Fisheries, privatization of fishery resources as well as waters and lands that fishing communities depend on for their livelihoods were strongly opposed to (SAMUDRA, 2008). Importance was given to the protection of customary and traditional access to fishery resources by small-scale fishing communities. States were urged to “guarantee access rights of small-scale and indigenous fishing communities

⁸ Sometimes, rights-based fisheries management is interpreted to imply privatization through allocation of individual rights. Here, the approach includes also common property rights held by a group of users or a community.

⁹ Text available at www.foodsovereignty.org/Portals/0/documenti%20sito/Core%20issues/Fisheries/bangkokstatement.pdf

to territories, lands and waters on which they have traditionally depended for their life and livelihoods” and “protect access of women of fishing communities to fish resources”. These statements indicate a need for replacing “open access” regimes with systems that ensure secure access to resources by certain groups (small-scale fishers) through, for example, community-based or common property rights (FAO, 2009a).¹⁰

WHY SHOULD A HUMAN RIGHTS APPROACH BE USED IN SMALL-SCALE FISHERIES GOVERNANCE AND DEVELOPMENT?

The VGGT refer to human rights and stress the importance of governance of tenure being consistent with States’ obligations under international law and that:

Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests.

(§ 4.8 in *Rights and responsibilities related to tenure*)

As indicated above, the use of the word “rights” in a fisheries context has tended to refer to rights-based fisheries management (fishing rights). However, especially in the context of small-scale fisheries, more recent discussions have evolved to include a human rights perspective and the right to secure and just livelihoods, including social and economic rights as well as rights to related resources (such as land). Linking fishing rights and human rights reflects a move towards an approach more in line with the reality of the diverse livelihoods of small-scale fishing communities and the complexity of poverty. To apply a broader-based approach to the allocation of rights in a fisheries and fishing community context means giving fishers rights to adequate livelihoods and equitable benefits. Good (fair and secure) tenure rights should balance social, cultural, economic and environmental goals, assist in reducing conflict, enhance food security and livelihoods for small-scale fishers and fishing communities, and facilitate the conservation of local ecosystems. This is not always an easy balance but by changing the perspective to a focus on people – the livelihoods of fishing communities – instead of on fisheries, the way tenure rights are perceived and defined will change. This requires a good understanding of the issues at hand and of the priorities of fishing communities. For example, the need for secure access to and management responsibilities for fishery resources may not be perceived as a first priority. Due to poverty and vulnerability, other pressing problems – health, schooling, etc. – could be considered more important. Small-scale fishing communities may lack the capacity and incentives to participate in fisheries

¹⁰ For a discussion on how to decide what type of tenure rights system that should be introduced in different situations, see the chapter *Allocating rights* in Part 2.